

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>BIRCH COMMUNICATIONS, INC.</b>	)	<b>WC Docket No. 09-197</b>
	)	
<b>Compliance Plan</b>	)	<b>WC Docket No. 11-42</b>
	)	
	)	
<b>Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only</b>	)	
	)	
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**COMPLIANCE PLAN OF BIRCH COMMUNICATIONS, INC.**

Birch Communications, Inc. (“Birch”), by its attorneys, respectfully submits its Compliance Plan to be associated with its Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)<sup>1</sup> of the Communications Act of 1934, as amended (the “Act”), and Section 54.201<sup>2</sup> of the rules and regulations of the Federal Communications Commission (“Commission”), which was filed on April 27, 2012 in the above-referenced matters. Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name in the non-rural areas of the following states: Alabama, Florida, North Carolina, and Tennessee (the “Designated Service Area”).<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 214(e).

<sup>2</sup> 47 C.F.R. § 54.201.

<sup>3</sup> Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee. More information on Birch’s corporate structure is set forth herein.

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>4</sup> In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.<sup>5</sup> Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.<sup>6</sup>

To avail itself of the Commission's conditional grant of forbearance from the facilities requirement, Birch provides this Compliance Plan in accordance with the requirements of the *Lifeline Reform Order*<sup>7</sup> and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.<sup>8</sup> Specifically, Birch's Compliance Plan provides information regarding Birch's planned Lifeline service offerings and outlines the measures Birch will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards

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<sup>4</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

<sup>5</sup> *Lifeline Reform Order* ¶ 368.

<sup>6</sup> *Lifeline Reform Order* ¶ 368.

<sup>7</sup> WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking, ¶ 368 ("*Lifeline Reform Order*").

<sup>8</sup> WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("*Public Notice*").

against waste, fraud and abuse. To that end, Birch provides the information requested in the *Public Notice*, which indicated compliance plans should contain the following:

**(1) Information about the carrier and the Lifeline plans it intends to offer:**

**(a) names and identifiers used by the carrier, its holding company, operating company and all affiliates;**

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services.

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108. Birch has authority to provide interstate and international telecommunications services from the Commission.<sup>9</sup> Birch’s wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch’s international 214 authority and is registered to provide interstate telecommunications services.<sup>10</sup> Birch’s wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.<sup>11</sup> The following wholly-owned subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.’s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch

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<sup>9</sup> IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

<sup>10</sup> FCC Filer ID 828502.

<sup>11</sup> IB File No. ITC-214-19990701-00441.

Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc.<sup>12</sup> Each of these subsidiaries also operates under the D/B/A name of “Birch Communications,” and certain of Birch’s subsidiaries also serve customers under the brand name “NOW Communications.”<sup>13</sup> Customers purchasing Birch’s prepaid wireless Lifeline service offering will see the “NOW Communications” logo.<sup>14</sup>

The Birch family of companies either offer service or are certificated to offer telecommunications services as CLECs and intrastate IXC in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The Birch family of companies currently serves approximately 118,000 customers throughout Birch’s 38-state territory.

Birch Communications Holdings, Inc. (“Birch Holdings”) owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is

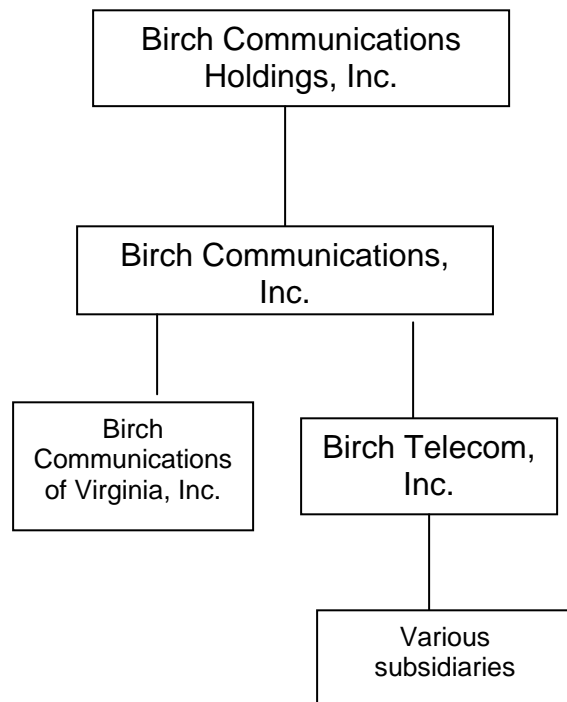
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<sup>12</sup> Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 820061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

<sup>13</sup> These subsidiaries are Birch Telecom of the South, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Kansas, Inc., Birch Telecom of Oklahoma, Inc., and Birch Telecom of Texas Ltd., L.L.P. Birch acquired the use of the “NOW Communications” trade name in an earlier asset acquisition.

<sup>14</sup> Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. Below is Birch's organizational chart:



The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest<sup>15</sup> in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305. None of the entities or individuals holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities.

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<sup>15</sup> R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

**(b) detailed information demonstrating that the carrier is financially and technically capable of providing the supported Lifeline service in compliance with the Commission's rules;**

The Commission has stated that the “relevant considerations” for demonstrating that a carrier is financially and technically capable would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.<sup>16</sup> Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. In addition to the other services it offers, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T for numerous years. Birch serves approximately 1800 wireline Lifeline customers at this time as a non-ETC reseller. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from the non-Lifeline services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering

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<sup>16</sup> *Lifeline Reform Order* ¶ 388.

wireless Lifeline products.<sup>17</sup> Birch's partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service.

**(c) detailed information, including geographic locations, of the carrier's current service offerings if the carrier currently offers service;**

Please see Birch's response to 1(a) above. Birch currently provides local, toll, domestic long distance, and international long distance as a CLEC/IXC in the 38 states listed above. Birch also provides broadband Internet, converged IP solutions, and related telecommunications and IT services throughout its 38-state service territory.

**(d) the terms and conditions of each Lifeline service plan offering, including rates, the number of minutes provided, and additional charges, if any, for toll calls; and**

At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to an eligible customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices<sup>18</sup>

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

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<sup>17</sup> Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

<sup>18</sup> Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

<u>Additional minutes</u>	
Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

**(e) all other certifications required under newly amended section 54.202 of the Commission's rules.**

Section 54.202 of the Commission's rules requires a common carrier seeking ETC designation to: (1) certify that it will comply with the service requirements applicable to the support that it receives;<sup>19</sup> (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only;<sup>20</sup> (3) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;<sup>21</sup> (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;<sup>22</sup> (5) demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules;<sup>23</sup> and (6) submit information describing the terms and conditions of the voice telephony plans offered to

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<sup>19</sup> 47 C.F.R. § 54.202(a)(1)(i).

<sup>20</sup> 47 C.F.R. § 54.202(a)(1)(ii).

<sup>21</sup> 47 C.F.R. § 54.202(a)(2).

<sup>22</sup> 47 C.F.R. § 54.202(a)(3).

<sup>23</sup> 47 C.F.R. § 54.202(a)(4).



Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.<sup>24</sup>

Birch has addressed (5) and (6) above in (1)(b) and (1)(d), and the five-year plan required under (2) is no longer applicable given that Birch seeks designation for Lifeline support only.<sup>25</sup>

With respect to (1), Birch seeks ETC designation for Lifeline support only, and therefore certifies that it will comply with the service requirements applicable to Lifeline support.

With respect to (3), Birch has the ability to remain functional in emergency situations. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations. Birch's MVNO contract arrangement with Sprint also imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.<sup>26</sup> As a large, nationwide wireless carrier, Sprint is subject to regulatory

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<sup>24</sup> 47 C.F.R. § 54.202(a)(5).

<sup>25</sup> *Lifeline Reform Order* ¶ 386.

<sup>26</sup> While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

requirements to remain functional during emergency situations.<sup>27</sup> Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

With respect to (4), Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement as permitted by the Commission's rules.<sup>28</sup>

**(2) A detailed explanation of how the carrier will comply with the Commission's new rules relating to determinations of subscriber eligibility for Lifeline services, including all of the consumer eligibility, consumer enrollment, and re-certification procedures, as required by Section VI and Appendix C of the *Lifeline Reform Order*, and a copy of the carrier's certification form.**

Birch currently offers wireline Lifeline services as a non-ETC reseller. Birch is therefore intimately familiar with the Commission's procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Birch plans to build on that expertise in offering its prepaid wireless Lifeline service offering as an ETC.

Set forth as Attachment A is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the FCC or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms.

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<sup>27</sup> Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

<sup>28</sup> 47 C.F.R. § 54.202(a)(3).

### Consumer Eligibility

Under its current procedures for its wireline Lifeline offering (as a non-ETC reseller), Birch utilizes the Texas Low Income Database Administrator database to verify and document a Texas consumer's eligibility for Lifeline service. Where available, Birch will utilize state-level databases to verify eligibility for its prepaid wireless Lifeline service offering until a national database is available. Where state-level database technology is not available, potential customers will send their proof of eligibility documentation directly to Birch (either via facsimile, U.S. mail, or electronic mail). In some states, Birch utilizes third-party retailers or sales offices to sign-up new subscribers, and eligibility information can be provided in-person by the potential subscriber. Eligibility information provided by potential consumers will be reviewed by appropriate Birch personnel pursuant to Birch's internal policies for review of Lifeline eligibility documents. As part of confirming a potential customer's eligibility, Birch will also confirm that there is no Lifeline duplication using the process discussed under (5) below.

Detailed information regarding the documents provided by the potential customer and Birch's review of the documentation will be included in the customer's account information as kept in Birch's internal recordkeeping system. Any actual documentation provided by the potential customer will be destroyed or returned to the customer upon request.<sup>29</sup>

### Enrollment and Certification

Once Birch determines a potential customer is eligible to receive a Lifeline service product, Birch will proceed to enroll the customer in its prepaid wireless Lifeline program and obtain the necessary certifications under the Commission's rules. In its current wireline Lifeline service offering (as a non-ETC reseller), Birch utilizes third-party verification (or "TPV") to

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<sup>29</sup> *Lifeline Reform Order* ¶ 101.

enroll customers and confirm their certification for Lifeline eligibility in addition to paper forms. Birch plans to utilize TPV for its prepaid wireless Lifeline service product, which the Commission has recognized is an acceptable method for obtaining such information,<sup>30</sup> as well as utilize paper forms for enrollment.

First, Birch will obtain the relevant contact information from the potential customer: (a) full name; (b) full residential address; (c) whether the residential address is permanent or temporary; (d) billing address if different than residential; (e) date of birth, (f) last 4 digits of Social Security Number; (g) if qualifying under federal or state assistance program, which program; and (h) if qualifying under income-based criteria, the number of individuals in the household. Next, Birch will utilize its TPV script or the paper form to address each of the certifications required under the Commission's rules. The certifications will be addressed through individual questions, each to be answered by the customer before moving any further in the TPV script<sup>31</sup> or each to be initialed by the customer on the paper form:

- Certifying, under penalty of perjury, that the consumer meets the Lifeline eligibility requirements because either the household receives benefits from a qualifying state or federal assistance program (and naming the program) or has income at or below 135% of the Federal Poverty Guidelines;
- Certifying, under penalty of perjury, that the consumer has presented documentation to Birch that accurately represents the consumer's household income or participation in the program;

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<sup>30</sup> *Lifeline Reform Order* ¶ 169.

<sup>31</sup> The customer will be required to answer "Yes" to these questions on the recorded TPV to enroll in Birch's prepaid wireless Lifeline program. TPV recordings are searchable by confirmation number and primary telephone number assigned to the customer. TPV confirmation numbers will be stored in the order and account notes associated with the customer.

- Certifying, under penalty of perjury, that the consumer will notify Birch within 30 days when it is no longer eligible for Lifeline service, whether because the consumer no longer qualifies, it has another Lifeline supported service, or for any other reason;
- Certifying, under the penalty of perjury, that the information the consumer is providing to Birch is true and correct to the best of its knowledge;
- Certifying, under the penalty of perjury, that the consumer understands that providing false or fraudulent information to receive Lifeline benefits is punishable by law;
- Certifying, under penalty of perjury, that the consumer understands it will be required to annually re-certify its continued eligibility for Lifeline at any time and that failure to do so will result in the termination of the consumer's Lifeline benefits;
- Certifying, under penalty of perjury, that the consumer will provide its new address to Birch within 30 days of moving;
- Certifying, under penalty of perjury, that the consumer will be required to verify its temporary address every 90 days if the subscriber provides a temporary residential address when initially enrolling;
- Certifying, under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service, that the consumer receives Lifeline-supported service only from Birch, and to the best of the consumer's knowledge no one else in the subscriber's household is receiving a Lifeline-supported service;
- Certifying that the consumer understands that Lifeline is a government benefit and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program;

- Certifying that the consumer understands that Lifeline is a non-transferrable benefit, and that an eligible Lifeline subscriber may not transfer its phone service to anyone else, not even someone who is also eligible;
- Certifying that the consumer understands that non-usage of its prepaid wireless Lifeline service from Birch for any consecutive 60-day period of time will result in de-enrollment and deactivation of the service; and
- Certifying that the consumer understands that (a) Lifeline is a federal benefit; (b) Lifeline service is available for only one line per household; (c) a household is defined for purposes of the Lifeline program as any individual or group of individuals who live together at the same address and share income and expenses; (d) a household is not permitted to receive Lifeline benefits from multiple providers; and (e) violation of the one-per-household rule constitutes a violation of Commission rules and will result in the consumer's de-enrollment from the program and could result in criminal prosecution by the United States government.

Birch will ensure its TPV script and paper documentation is written in clear, easily understood language. Birch will retain its TPV recordings and copies of its paper enrollment/certification documentation for at least five (5) years.

#### Annual Re-Certification

Birch's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. Birch plans to utilize this anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. Birch will utilize state-level databases or the national database to the extent available to re-certify customers. Until that time, Birch plans to contact its prepaid wireless Lifeline customers via written

notification, and is exploring the ability to utilize text messaging, automated voicemail, and TPV re-certification procedures. Any customers that do not re-certify within the 30-day window will be de-enrolled from Birch's prepaid wireless Lifeline service within five (5) business days after the expiration of the subscriber's time to respond to Birch's re-certification efforts as required by Commission's rules, which is explained in more detail below.<sup>32</sup> Birch will retain any TPV recordings, paper forms, copies of text message, or other documentation for re-certification for at least five (5) years.

**(3) A detailed explanation of how the carrier will comply with the forbearance conditions relating to public safety and 911/E-911 access.**

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.<sup>33</sup> Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

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<sup>32</sup> 47 C.F.R. § 54.405(e)(4).

<sup>33</sup> Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

**(4) A detailed explanation of how the carrier will comply with the Commission’s marketing and disclosure requirements for participation in the Lifeline program;**

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify the service.<sup>34</sup> Birch will utilize the Commission’s 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.<sup>35</sup> Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies.

Birch’s advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch’s advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch’s prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will also advertise through online search engines and third-party referral agents/dealers. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses,

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<sup>34</sup> 47 C.F.R. § 54.405(b).

<sup>35</sup> *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).



and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.<sup>36</sup>

**(5) A detailed explanation of the carrier’s procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier’s toll limitation service, if applicable, and the carrier’s non-usage policy, if applicable.**

Prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.<sup>37</sup>

De-enrollment for failure to re-certify. Birch will also re-check its internal databases and available state-level or federal databases as part of its annual re-certification process. Birch will issue a letter separate from the invoice to all subscribers, requesting them to recertify and noticing the subscriber that failure to respond within 30 days will trigger de-enrollment. The subscriber will be given the option to mail or fax back the re-certification form. The subscriber will also be given the option to complete their recertification form online, over the phone with TPV, or by mail. If the subscriber fails to respond with their completed form and documentation of eligibility by the 30th day of the notice period, Birch will de-enroll the customer by taking the

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<sup>36</sup> *Lifeline Reform Order* ¶¶ 274-282.

<sup>37</sup> *Lifeline Reform Order* ¶ 257.

following steps: Birch will place a Local Service Request (“LSR”) with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and the credit may only be reapplied if customer goes through certification process again.

De-enrollment for duplicative support. Birch understands that duplicative claims are wasteful and burden the fund, and will take all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the Commission, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, Birch will de-enroll the subscriber within five business days.<sup>38</sup> To the extent de-enrollment is necessary due to duplicative support, Birch will take the following steps to de-enroll a customer: Birch will immediately place a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and have a company policy in place that the credit may only be reapplied if the customer goes through certification process again. Birch will not seek reimbursement for any de-enrolled subscriber following the date of that subscriber’s de-enrollment.

De-enrollment for non-usage. As part of its de-enrollment procedures, Birch will comply with the Commission’s 60-day non-usage policy. Specifically, Birch will not consider a consumer to be enrolled, and Birch will not seek reimbursement for that consumer, until the consumer activates its service in the first instance.<sup>39</sup> Further, Birch will de-enroll and not seek

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<sup>38</sup> 47 C.F.R. § 54.405(e)(2); *see also Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 15 (2011).

<sup>39</sup> 47 C.F.R. § 54.404(b)(10).

reimbursement for any consumer whose service is inactive for a consecutive 60-day period.<sup>40</sup>

Birch will define “usage” consistent with Commission rules. Specifically, the following activities will constitute “usage” of Birch’s prepaid wireless Lifeline service: (1) completion of an outbound call; (2) purchase of minutes to add to the subscriber’s service plan; (3) answer of an incoming call from a party other than Birch or its representative; and (4) response to direct contact from Birch and confirmation that the consumer seeks to continue receiving the Lifeline service.<sup>41</sup> Birch will run usage reports for each customer to determine non-usage over a period of 60 consecutive days. Despite a consumer’s “usage” as defined herein and in the Commission’s rules, Birch will continue to comply with its existing public safety obligations to transmit all wireless 911 calls regardless of subscriber inactivity even if Birch is no longer providing Lifeline service to that consumer.<sup>42</sup>

When a customer has been identified for de-enrollment for non-usage, a letter will be sent to the customer, and the customer will have 30 days to respond. Birch will allow 15 calendar days for mail delivery and handling, and a 30-day notice period thereafter. Birch will run usage monitoring reports on the customers who have been noticed and de-enroll the customer if usage is not reflected on their account by the 30th day. On the 31st day, Birch will de-enroll the customer by placing a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits and remove the credit supplied by Birch to the end user from the billing system.

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<sup>40</sup> *Lifeline Reform Order* ¶ 257.

<sup>41</sup> 47 C.F.R. § 54.407(c)(2); *Lifeline Reform Order* ¶ 261.

<sup>42</sup> *Lifeline Reform Order* ¶ 262.

## CONCLUSION

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously approve its Compliance Plan and designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Florida, North Carolina, and Tennessee.

Respectfully submitted,

**BIRCH COMMUNICATIONS, INC.**



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Dated: May 7, 2012

Its Attorneys

# **Attachment A to Compliance Plan**

**Draft Enrollment and Certification Form**



## Lifeline Certification

### Three easy steps:

- (1) Complete certification form (on page 1);
- (2) Locate documentation of your participation in a qualifying program (documentation requirements are on page 2)
- (3) Fax, or mail the completed certification form and document to NOW Communications (contact information on page 2).

If you have any questions please contact NOW customer service at  
[TBD]

# Lifeline Certification Form

Page 1

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose. See reverse for documentation requirements and submission instructions.

Things to know about the Lifeline Program:

- (1) Lifeline is a Federal benefit that is not transferrable to any other person;
- (2) Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers;
- (3) A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- (4) Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Last Four Digits of Social Security Number or Tribal ID Number: \_\_\_\_\_ Contact Telephone Number: \_\_\_\_\_

**Residential Address:**

*Must be a street address (not a P.O. Box) and your principal residence.*

Address Line 1: \_\_\_\_\_

Address Line 2: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

This address is: ☐ Permanent ☐ Temporary ☐ A shared, multi-household residence

*If temporary, your address must be certified or updated every 90 days.*

**Billing Address:**

*May contain a P.O. Box.*

☐ Check here if the billing address is the residential address.

Address Line 1: \_\_\_\_\_

Address Line 2: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

I hereby certify that I qualify to participate in at least one of the following programs (*check all that apply*):

*Please see the related documentation requirements on the reverse side.*

- (Initial) \_\_\_\_\_
- \_\_\_\_\_ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps
- \_\_\_\_\_ Supplemental Security Income (SSI)
- \_\_\_\_\_ Federal Public Housing Assistance (FPHA) or Section 8
- \_\_\_\_\_ Low Income Home Energy Assistance Program (LIHEAP)
- \_\_\_\_\_ National School Lunch Program's free lunch program
- \_\_\_\_\_ Temporary Assistance for Needy Families (TANF)
- \_\_\_\_\_ Medicaid

Tribal Land Residents Only: I hereby certify that I reside on federally recognized tribal lands and that I qualify to participate in at least one of the programs listed above or the following programs (*check all that apply*):

- (Initial) \_\_\_\_\_
- \_\_\_\_\_ Bureau of Indian Affairs General Assistance
- \_\_\_\_\_ Tribally administered Temporary Assistance for Needy Families (TTANF)
- \_\_\_\_\_ Head Start (only participants that qualified based on meeting the income qualifying standard)
- \_\_\_\_\_ Food Distribution Program on Indian Reservation (FDPIR)

I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are \_\_\_\_\_ members in my household.

*Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side.*

(Initial) \_\_\_\_\_

**I certify, under penalty of perjury: Initial by Each Certification**

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform NOW within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service.

I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that NOW will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then my Lifeline service will be terminated.

My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

I authorize NOW and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to NOW and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

APPLICANT SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**FOR OFFICE USE ONLY** Company Representative Name: \_\_\_\_\_

Documentation Verified: \_\_\_\_\_

Representative Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DOCUMENTATION REQUIREMENTS**

You are required to provide proof of your participation in the programs you identified or proof of your qualifying income.

IF YOU ARE QUALIFYING BASED ON ELIGIBILITY TO PARTICIPATE IN A PROGRAM, YOU MUST PROVIDE COPIES OF ONE OR MORE OF THE FOLLOWING DOCUMENTS:

- (1) current or prior year's statement of benefits from qualifying assistance program;
- (2) notice or letter of participation in a qualifying assistance program;
- (3) program participation documents; or
- (4) official document demonstrating receipt of benefits from a qualifying assistance program.

IF YOU ARE QUALIFYING BASED ON INCOME, YOU MUST PROVIDE COPIES OF ONE OR MORE OF THE FOLLOWING DOCUMENTS:

Prior year's state, federal or tribal tax return, a Social Security benefits statement, a Veterans Administration benefits statement, a Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance, a Retirement/Pension benefit statement, a divorce decree or child support document, an Unemployment/Workers Compensation benefits statement, a current income statement from employer or paycheck stub. If you provide documentation other than your prior year's state, federal, or tribal tax return, you must submit three consecutive months worth of the same type of document within the current calendar year.

135% FEDERAL POVERTY GUIDELINES - 2012	
Members of Household	Household Income must be at or below
1	\$ 15,080
2	\$ 20,426
3	\$ 25,772
4	\$ 31,118
5	\$ 36,464
6	\$ 41,810
7	\$ 47,156
8	\$ 52,502
For every additional member of your household, add \$4,950	

SUBMITTED DOCUMENTS WILL BE RETURNED AT YOUR REQUEST OR DESTROYED BY NOW COMMUNICATIONS.

**SUBMISSION INSTRUCTIONS**

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY AND CAN BE SUBMITTED BY:

MAIL

NOW Communications

[TBD]

FAX

[TBD]

IF YOU HAVE QUESTIONS, PLEASE CALL [TBD] FOR ASSISTANCE.

**NOTICES**

[Space reserved for additional notices or information postings, including state specific notices or carrier information]

NOW Communications offers Lifeline and Link Up services only in areas where it has been designated as an Eligible Telecommunications Carrier.